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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,573	04/22/2004	Edward J. Coleman	021587-9001-02	6731
23510	7590	04/22/2005	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP ONE SOUTH PINCKNEY STREET P O BOX 1806 MADISON, WI 53701			JASTRUZAB, JEFFREY R	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)
	10/829,573	COLEMAN ET AL.
Examiner	Art Unit	
Jeffrey R. Jastrzab	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 2/10/05.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

Claims 2 and 3 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the claiming of structures being in contact with or implanted within the body amounts to an inferential recitation of the body, which renders these claims non-statutory.

Applicants' arguments that since Claim 1 is statutory, the dependent claims must be statutory is flawed and incorrect. The addition of "implanted" makes these claims non-statutory. Such language was not in Claim 1. This rejection is hereby made FINAL.

Claim Rejections - 35 USC § 102

Claims 1-7 stand and new claim 8 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Milbocker, US 6,602,182. Applicant argues that "even a cursory review of the device of Milbocker indicates that it does not and could not possibly operate and have the structure required by the present invention "to create a rhythmic massage of the heart from its apex to its base..."". Applicants' "cursory review" apparently failed to notice the portion of the Milbocker device at column 6, lines 33 et seq. that states "actuating means for converting actuating signal into a periodic movement of the valve member(s)...said sites providing a restoring force directed from the apex to the base (emphasis added) so as to counter the forces applied to the wrap

by the heart". Applicants' additional comments regarding the array providing a "coordinated electrical stimulation" are not understood since there is no direct electrical stimulation described or claimed. Applicants' arguments as to Milbocker being passive are noted, however Milbocker only teaches passive restraint as an embodiment, e.g. column 9 , lines 18 et seq. The other embodiments are active pressure assist devices as Applicants'. This rejection is hereby made FINAL. As to Claim 8, the embodiment of Figure 16 of Milbocker has valves positioned near the apex and would therefore apply pressure as Bourden tubes.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 272-4947. The examiner can normally be reached on Monday - Wednesday 5:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
